courageous man despises and a good man abhors." The court's suggestion is not even supported by Von Jhering, an outspoken advocate of self help, whose most radical statement is,[12] "The defense of one's concrete legal rights, when those rights have been attacked, is a duty not only to himself but also to society." It is to be noticed that he says, "legal rights," but a person has no legal right to pursue and punish a person after all danger to himself is gone.[13] One of the ends of the law is to prevent private war. Dean Pound says,[14] "A condition in which self help and private war are the normal processes of society is the very antithesis of the legal order." The remark of the court that a person who has been assaulted may overtake the assailant in the heat of the moment and suitably chastise him, not only has little support either in authority or on principle, but would be a step backward in legal development.

S. F. H.

EVIDENCE: BOOKS OF ACCOUNT: LAYING FOUNDATION.—At a time when the social aspects of the law are being emphasized and developed, that which tends more closely to unite law and legal procedure with practical common sense is particularly welcome. This is especially true of the rules for laying the foundation for the introduction in evidence of account books.[1] While the business man has implicit faith in the correctness of his books and the commercial world as a whole relies upon them, they are not generally receivable in evidence until proved by a witness having personal knowledge of the facts recorded therein.[2] If the bookkeeper thus qualified is dead or absent from the jurisdiction the books would nevertheless be received, because of the necessity of the situation.[3]

In most cases, however, the entrant making up the books relies solely on the oral or written reports of others, having himself no personal knowledge of the transactions entered. These reports are hearsay.[4] Therefore, the original observers themselves must verify them,[5] unless possibly, such proof is excused by reason

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[12] Von Jhering, "Struggle for Law" (Lalor's translation, 2d ed.), p. 76.
[13] Supra, n. 7.
[14] "Interest of Personality," 27 Harvard Law Review, 198.

[1] 10 R. C. L. 1174. See also, 1 California Law Review, 377.
[2] Wigmore, Evidence, § 1530.
[3] American Surety Co. v. Pauly (1896), 72 Fed. 470; Stanley v. Wilkerson (1897), 63 Ark. 556, 39 S. W. 1043; Meyer v. Brown (1902), 130 Mich. 449.
[4] Swan v. Thurman (1897), 112 Mich. 416, 70 N. W. 1023; San Francisco Teaming Co. v. Gray (1909), 11 Cal. App. 314, 104 Pac. 999; Chandler v. Robinett (1913), 21 Cal. App. 333, 130 Pac. 314.
[5] Kerns v. McKean (1888), 76 Cal. 87, 18 Pac. 122; People v. Mitchell (1892), 94 Cal. 550, 29 Pac. 1106; Butler v. Estrella Raisin Vineyard Co. (1899), 124 Cal. 239, 56 Pac. 1040; San Francisco Teaming Co. v. Gray, supra, n. 4; Chandler v. Robinett, supra, n. 4. See also, 52 L. R. A. 595, n.

of death, absence from the jurisdiction, insanity or the like,[6] in which case the bookkeeper's verification of the entries as a correct copy of the original observer's statement is probably sufficient.[7] But more often the practical inconvenience of bringing in all the salesmen, clerks, teamsters and others having personal knowledge is as great an obstacle to the business man as absolute unavailability, and should operate equally as excusing their non-appearance. Some courts have adopted such a rule dispensing with the testimony "of witnesses having personal knowledge of the transactions when it appears that the testimony of such witnesses, because of death, interest, incompetence, absence, inconvenience, or otherwise is unavailing."[8]

In California the courts had not progressed so far. In the cases where the above rule might have been applied there was no showing of inconvenience or the like, so the results reached were proper[9] but the language used would seem to deny the rule in toto. The conclusion reached in *Montgomery and Mullen Lumber Company v. Ocean Park Scenic Railway Company*[10] by the District Court of Appeal is therefore all the more gratifying. In that case lumber salesmen, after filling an order in the yard, would come into the office and enter the transaction on the books in question in triplicate, of which the duplicate copy remained as a permanent record—the other two being sent out—and on which the office force made the extensions in dollars and cents. In proving the books, only the manager of the company was called. He testified that they were kept under his direction and that he knew to his own knowledge that they were correct charges. No salesmen were called or accounted for, but the books were admitted over the objection of defendant that no foundation had been laid.

The case is stronger on its facts than any yet considered, for the manager was neither an original observer nor an entrant. In People v. Mitchell[11] and San Francisco Teaming Co. v. Gray[12] the original observers were not called and the accounts would not be received on the testimony of the entrants alone. The principal case seems to change this rule and go even farther than the view contended for, that the original observer should be dispensed

[6] That such is the general rule see cases cited supra, n. 3. In California there are no decisions, but there are dicta in accord. San Francisco Teaming Co. v. Gray, supra, n. 4.

[7] Wigmore, Evidence, § 1530.

[8] W. Va. Architects & Builders v. Stewart (1911), 68 W. Va. 506, 70 S. E. 113, 36 L. R. A. (N. S.) 899; Mo. Electric Light & P. Co. v. Carmody (1897), 72 Mo. App. 534; Chesapeake & O. Ry. Co. v. Stojanowski (1911), 191 Fed. 720.

[9] People v. Mitchell, supra, n. 5; San Francisco Teaming Co. v. Gray, supra, n. 4.

[10] (Nov. 11, 1916), 23 Cal. App. Dec. 716, 161 Pac. 1171.

[11] Supra, n. 5.

[12] Supra, n. 4.

with on a showing of unavailability, by not even requiring that such a showing be first made. But it is eminently proper where there are a number of salesmen, teamsters and clerks making reports and several bookkeepers entering them, that the man who is in charge of all these activities and who knows that the books are regularly and correctly kept should be competent to so testify and enable the books to be received as evidence, particularly if a showing of inconvenience is made.

J. G.

MINING LAW: EXTRALATERAL RIGHTS ON VEIN POSSESSING CHARACTERISTICS OF ANTICLINAL FOLD OR ROLL.—An interesting question raised by the case of *Jim Butler-Tonopah Mining Company v. West End Consolidated Mining Company*,[1] is whether extralateral rights can be exercised in two opposite directions on a vein possessing the characteristics of an anticlinal fold or roll. That is, when the vein can be followed up on its dip to a crest or axis of the roll or fold and then turns over and dips down in an opposite direction, does this crest or axis of the roll constitute an apex? On this point there has been no positive adjudication. There are cases[2] holding that where there is a swell or wave or roll in a vein this does not constitute an apex. The vein in question was in the form of an anticlinal roll or fold. Heretofore, a terminal edge has been considered by the cases and authorities as an essential element of a legal apex.[3] One of the approved definitions says that a legal apex is "All that portion of a terminal edge of a vein from which the vein has extension downward in the direction of the dip."[4] The court in the Jim Butler-West End case decided that a terminal edge was not an essential element of a legal apex, saying that when the vein turns over and dips in an opposite direction, that the crest of the fold is the legal apex and that an extralateral right can be exercised in both directions on the opposite dipping limbs of the anticlinal vein. The decision is also noteworthy for the fact that this is the first time that the statute has been construed so as to award an extralateral right in two opposite directions. An examination of the mining laws of other countries where the extralateral right has been sanctioned in one form or another does not disclose any intimation that this right has ever been exercised on the same vein in two opposite directions.

[1] (July 3, 1916), 158 Pac. 876.

[2] Illinois Silver M. Co. v. Raff (1893), 7 N. M. 336, 34 Pac. 544; Iron Silver Mining Co. v. Murphy (1880), 3 Fed. 368, 375-76; Stevens v. Williams (1879), Fed. Cas. No. 13,414.

[3] Costigan on Mining Law, 139-40; Barringer & Adams, The Law of Mines and Mining, p. 442; Duggon v. Davey (1886), 4 N. Dak. 110, 26 N. W. 887; Alameda M. Co. v. Success M. Co. (Dec. 29, 1916), 161 Pac. 862.

[4] Lindley on Mines, p. 687; definition approved in Stewart M. Co. v. Ontario M. Co. (1914), 237 U. S. 350, 35 Sup. Ct. Rep. 610, 614, 59 L. Ed. 989.